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# State v. Oldham Appellant's Brief Dckt. 38633

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 38633
	)	
v.	)	
	)	
BILLY RANCIE OLDHAM JR.,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	

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**BRIEF OF APPELLANT**

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APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF CASSIA

---

HONORABLE MICHAEL R. CRABTREE  
District Judge

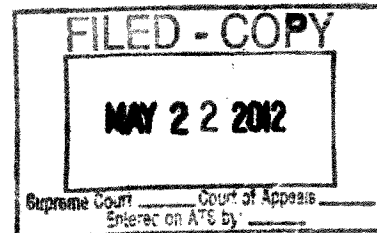
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PLAINTIFF-RESPONDENT

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## STATEMENT OF THE CASE

### Nature of the Case

Billy Rancie Oldham, Jr., appeals from the district court's denial of his motion to terminate a no contact order. He asserts that the district court abused its discretion when it denied his motion.

### Statement of the Facts and Course of Proceedings

Mr. Oldham pleaded guilty to first degree arson after setting his own house on fire. (*State v. Oldham*, 2010 Unpublished Opinion No. 485 (May 27, 2010).) Following his guilty plea, the State moved for a no contact order protecting, *inter alia*, his then-wife, Sabre Oldham, alleging that Ms. Oldham was a witness or a victim in the case and "continue[d] to be contacted by the Defendant against [her] wishes." (Motion for No Contact Order.<sup>1</sup>) The district court issued a no contact order protecting "the alleged victim," Ms. Oldham, through January 21, 2010. (No Contact Order (Augmentation).)

Mr. Oldham requested and received a hearing on a motion to modify or terminate the no contact order with respect to his ex-wife. At that hearing, counsel for Mr. Oldham explained that Mr. Oldham and Ms. Oldham had recently divorced, and the no contact order was preventing him from having contact with his minor children, of whom Ms. Oldham had been granted sole physical and legal custody. (*See generally* Tr.<sup>2</sup>) His counsel then moved the district court to issue an order either dismissing the no contact order or modifying it so he "would be able to have contact with the minor children . . . ." (Tr., p.7, L.24 – p.8, L.4.)

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<sup>1</sup> See Order Granting Motion to Augment and to Suspend the Briefing Schedule.

<sup>2</sup> This reference is to the transcript of the June 23, 2009, hearing on Mr. Oldham's motion to modify or terminate the no contact order, prepared on April 16, 2012, as a result of this Court's order granting Mr. Oldham's motion to augment and suspend.

Although the district court modified the no contact order to allow Mr. Oldham to have incidental contact with Ms. Oldham for the purpose of making a weekly telephone call to his children, it also *sua sponte* extended the order's duration by thirteen years, with a new expiration date of December 15, 2023. (Tr., p.16, L.19 – p.18, L.4.) When defense counsel requested a reason for the extension, the district court explained,

The reason is that Ms. Oldham was to be a witness against Mr. Oldham in the trial. There were indications to me of contacts that were not appropriate between Mr. Oldham and Ms. Oldham while this matter was pending. I think she's made it very clear that she doesn't wish to have contact, and as the type of case that was involved here, I think I have the discretion to enter that order. The date that I've chosen to extend the order is consistent with the termination or completion of Mr. Oldham's sentence, and for those reasons, the order will enter.<sup>[3]</sup>

(Tr., p.20, L.19 – p.21, L.9.)

Mr. Oldham later filed a motion to terminate the no contact order, in which he wrote,

I request the pending N.C.O. between Sabre M. Oldham and myself Billy R. Oldham Jr [sic] be terminated. The courts wrongfully [sic] placed the N.C.O. between the above listed people. The courts faulsely [sic] claim Sabre Oldham was a witness [and] or victim. The courts [sic] statement is simply false! The defendant had already plead [sic] guilty to Arson without trial so there were no witness's [sic] and Sabre Oldham already notified [the] prosecution she had lied and was not a victim of domestic battery and the charge was dropped so there was no victim.<sup>[4]</sup> In Mrs. Oldham[s] request for the N.C.O. the reason was because they claim defendant kept calling to try to talk too [sic] Sabre or the children. They did not claim any threats of violence were made or any verbal disrespect took place. The defendant proved he had not called and the courts abused there [sic] discreation [sic].

(R., pp.21-22.) The State filed a written objection, but provided no basis for objecting.

(R., p.24.)

---

<sup>3</sup> None of the information cited to by the district court was unknown at the time the initial order, set to expire in 2010, was issued. Unfortunately, Mr. Oldham did not appeal from the district court's order extending the duration of the no contact order.

Without holding a hearing,<sup>5</sup> the district court issued an Order Denying the Defendant's Motion to Terminate N.C.O. Citing *State v. Cobler*, 148 Idaho 769 (2010), the district court explained its reasoning as follows:

The court perceives the issue as a matter of discretion. The court exercises that discretion within the bounds provided by the following legal authority. Idaho Code § 18-920(1) provides: "When a person is charged with or convicted of an offense . . . for which a court finds that a no contact order is appropriate, an order forbidding contact with another person may be issued."

In its discretion, the court imposed the No Contact Order in this case because the court found that such an order was appropriate and necessary to protect Ms. Oldham. There is nothing in the Defendant's Motion that now persuades the court that the No Contact Order should be modified or terminated. Therefore, the Defendant's Motion to Modify [sic] N.C.O. is denied.

(R., p.27.)

Mr. Oldham timely filed a Notice of Appeal from the district court's Order Denying the Defendant's Motion to Terminate N.C.O.<sup>6</sup> (R., p.40.)

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<sup>4</sup> The no contact order that is at issue in this appeal was not issued in the dismissed domestic violence case, and therefore, is not subject to being appealed on that basis.

<sup>5</sup> The district court noted, "[t]he Defendant did not request a hearing on the Motion." (R., p.27.)

<sup>6</sup> Mr. Oldham's original Notice of Appeal did not comply with the requirements of Idaho Appellate Rule 17(o), and his appeal was conditionally dismissed by this Court. Mr. Oldham complied with the conditions set forth in the Order Conditionally Dismissing Appeal, and timely (within the period of time set forth in the Order) filed a Notice of Appeal that complied with Idaho Appellate Rule 17(o). (R., pp.30-45.)

### ISSUE

Did the district court abuse its discretion when it denied Mr. Oldham's motion to terminate the no contact order?



## ARGUMENT

### The District Court Abused Its Discretion When It Denied Mr. Oldham's Motion To Terminate The No Contact Order

#### A. Introduction

Mr. Oldham asserts that, in light of the information he provided in his motion to terminate the no contact order, as well as facts known to the district court at the time that it issued the original no contact order, the district court abused its discretion when it denied his motion.

#### B. Standard Of Review

A district court's decision on a motion to modify a no contact order is reviewed under an abuse of discretion standard. *Cobler*, 148 Idaho at 771. When reviewing a trial court's discretionary decision, the appellate court considers (1) whether the district court perceived that the issue was one of discretion, (2) whether it acted within the boundaries of that discretion and consistently with any applicable legal standards, and (3) whether its decision was reached by an exercise of reason. *Id.*

#### C. The District Court Abused Its Discretion When It Denied Mr. Oldham's Motion To Terminate The No Contact Order

In his motion to terminate the no contact order barring him from contacting Sabre Oldham until 2023, Mr. Oldham wrote,

I request the pending N.C.O. between Sabre M. Oldham and myself Billy R. Oldham Jr [sic] be terminated. The courts wrongfully [sic] placed the N.C.O. between the above listed people. The courts faulsely [sic] claim Sabre Oldham was a witness<sup>7</sup> [and] or victim. The courts [sic] statement is simply false! The defendant had already plead [sic] guilty to Arson without trial so there were no witness's [sic] and Sabre Oldham already

---

<sup>7</sup> In light of the fact that Ms. Oldham was listed on the witness list filed by the State prior to the date set for trial (Trial Witness List (Augmentation)), Mr. Oldham does not, on appeal, renew his argument that Ms. Oldham was not a witness for purposes of the issuance of the no contact order.

notified [the] prosecution she had lied and was not a victim of domestic battery and the charge was dropped so there was no victim. In Mrs. Oldham['s] request for the N.C.O. the reason was because they claim defendant kept calling to try to talk too [sic] Sabre or the children. They did not claim any threats of violence were made or any verbal disrespect took place. The defendant proved he had not called and the courts abused there [sic] discretion [sic].

(R., pp.21-22.) The State filed notice that it objected to Mr. Oldham's motion, but provided no argument in support of its objection. (R., p.24.)

The district court explained its basis for denying the motion as follows:

The court perceives the issue as a matter of discretion. The court exercises that discretion within the bounds provided by the following legal authority. Idaho Code § 18-920(1) provides: "When a person is charged with or convicted of an offense . . . for which a court finds that a no contact order is appropriate, an order forbidding contact with another person may be issued."

In its discretion, the court imposed the No Contact Order in this case because the court found that such an order was appropriate and necessary to protect Ms. Oldham. There is nothing in the Defendant's Motion that now persuades the court that the No Contact Order should be modified or terminated. Therefore, the Defendant's Motion to Modify [sic] N.C.O. is denied.

(R., p.27.)

Idaho Code § 18-920(1) provides:

When a person is charged with or convicted of an offense under section 18-901, 18-903, 18-905, 18-907, 18-909, 18-911, 18-913, 18-915, 18-918, 18-919, 18-6710, 18-6711, 18-7905, 18-7906 or 39-6312, Idaho Code, or any other offense for which a court finds that a no contact order is appropriate, an order forbidding contact with another person may be issued. A no contact order may be imposed by the court or by Idaho criminal rule.

Idaho Code § 18-920(1).

Mr. Oldham does not dispute that the district court recognized the decision as a discretionary one. He does, however, assert that, given the facts of his case, the district court's decision was not reached by an exercise of reason or within the bounds of its

legal discretion. With respect to the bounds of the legal discretion that exist in the application of I.C. § 18-920(1), the plain text of the statute provides that an order may only be issued if it is “appropriate” in light of the facts and circumstances known to the district court.

Given the fact the district court was presented with no evidence that Mr. Oldham had, through his contacts and attempts to have contact with his ex-wife prior to the issuance of the no contact order, ever harmed or threatened to harm her or anyone else, along with the fact there was no information that, in the more than two years that elapsed between the issuance of the initial no contact order and his motion to terminate that order,<sup>8</sup> Mr. Oldham ever violated – or attempted to violate – the no contact order, the district court’s decision to deny his motion to terminate the no contact order was erroneous.<sup>9</sup>

In light of the foregoing, Mr. Oldham maintains that the district court abused its discretion by not reaching its decision by an exercise of reason and failing to act within the bounds of its legal discretion when it denied his motion to terminate the no contact order because such an order was not, as the district court concluded, necessary “to protect Ms. Oldham.”

### CONCLUSION

For the reasons set forth herein, Mr. Oldham respectfully requests this Court vacate the district court’s order denying the motion to terminate the no contact order,

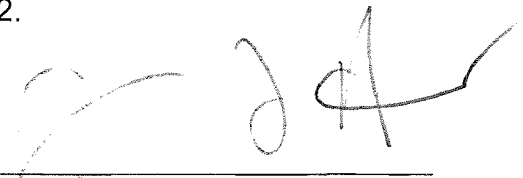
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<sup>8</sup> The initial no contact order was issued on January 21, 2009. (R., p.20.) Mr. Oldham’s motion to terminate the no contact order was filed on February 8, 2011. (R., p.21.)

<sup>9</sup> Given the fact that the State filed an objection, but did not provide any basis for that objection, it can be inferred that Mr. Oldham did not violate or attempt to violate the no contact order, as the State would surely have provided that information to the district court in objecting to Mr. Oldham’s motion.

and remand this matter with instructions that the district court vacate the no contact order protecting Sabre Oldham.

DATED this \_\_\_\_ day of May, 2012.



---

SPENCER J. HAHN  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this \_\_\_\_ day of May, 2012, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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ISCI  
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A handwritten signature in black ink, appearing to read 'Evan A. Smith', written over a horizontal line.

EVAN A. SMITH  
Administrative Assistant

SJH/jf